No. 422

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CHARLES ELMORE CROP

In the Supreme Court of the United States

OCTOBER TERM, 1951

DEAN ACHESON, AS SECRETARY OF STATE, APPELLANT

vs.

HISAO MURATA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

STATEMENT AS TO JURISDICTION

In the Supreme Court of the United States

Civil No. 1011

HISAO MURATA

v.

DEAN ACHESON, AS SECRETARY OF STATE

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, defendant-appellant submits herewith his statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the decision and the judgment of the District Court entered in this cause.

OPINION BELOW

The opinion of the District Court is not yet reported. A copy of the decision, which includes the findings of fact and conclusions of law, as well as the opinion, is annexed hereto as Appendix A. A copy of the final judgment is annexed hereto as Appendix B.

JURISDICTION

The decision of the District Court was entered September 12, 1951, and a final judgment was en-

tered October 11, 1951. A petition for appeal is presented to the District Court herewith, on October 11, 1951. The jurisdiction of the Supreme Court to review on direct appeal a decision or judgment holding an Act of Congress unconstitutional in a civil proceeding to which an officer of the United States is a party is conferred by 28 U.S.C. 1252 and 28 U.S.C. 2101(a). The following decisions sustain the jurisdiction of the Supreme Court to review the decision and judgment on direct appeal in this case. *Fleming* v. *Rhodes*, 331 U. S. 100; *United States* v. *Bekins*, 304 U. S. 27.

QUESTION PRESENTED

Whether Congress has the constitutional power to provide, as it has in Section 401(e) of the Nationality Act of 1940, that a person who is a national of the United States by birth shall lose his nationality by entering or serving in the armed forces of a foreign state, if he has or acquires the nationality of such foreign state.

STATUTE INVOLVED

Section 401 of the Nationality Act of October 14, 1940, c. 876, 54 Stat. 1138, 1168, 8 U.S.C. 801, provides in pertinent part as follows:

> A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> * * * * *
>
> (e) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or
>
> * * * * *

STATEMENT

The plaintiff-appellee filed in the District Court for the District of Hawaii a complaint under Section 503 of the Nationality Act (8 U.S.C. 903) seeking a judgment declaring him to be a citizen of the United States. After trial, the District Court found the following facts:

Plaintiff was born in Hawaii in 1922 and was at birth a citizen of the United States and a subject of Japan. In 1940, he went to Japan to attend school. He was inducted into the Japanese Army in 1943, and was released in 1946. At the time he applied for a United States passport, he lied concerning his service in the Japanese Army, but in March 1950, told the truth about such service. His application for a passport was denied on the ground that he had lost his United States citizenship.

Referring to its decision in *Okimura* v. *Acheson*, decided the same day, the district court held that Congress had no constitutional power to divest an American born citizen of his nationality because he served in a foreign army. The district court accordingly granted plaintiff's petition that he be declared a citizen of the United States.

THE QUESTION IS SUBSTANTIAL

This cause presents the same issue as that involved in *Okimura* v. *Acheson*, decided by the same district court on the same day, except that it involves only the provisions of Section 401(*e*) of the Nationality Act of 1940 relating to military service in a foreign state, and not the additional provisions of Section 401(e) relating to voting in a political election in a foreign state. We respect-

fully refer the Court to our Statement as to Jurisdiction filed in the *Okimura* case and suggest that disposition of this case be made in the same manner as in the *Okimura* case.

Respectfully submitted,

HOWARD K. HODDICK,
United States Attorney,
Counsel for Defendant.

OCTOBER 11, 1951.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

Civil No. 1011

HISAO MURATA, PLAINTIFF

v.

DEAN ACHESON, AS SECRETARY OF STATE, DEFENDANT

DECISION

This is a companion case, under 8 U.S.C. Section 903, to the *Okimura* case, No. 1027, also decided this day.

FINDINGS OF FACT

The following are found to be the facts:

1. Murata was born in Hawaii, United States of America, and became at birth a dual citizen—that is, he acquired United States citizenship by birth in this country and Japanese nationality under the Japanese law of blood.

2. Having been graduated from a public high school in Hawaii, in 1940, plaintiff went on a United States passport to Japan, intending to remain there a year to study, at his father's request, Japanese.

3. Shortly before the Japanese attack upon the United States at Pearl Harbor, plaintiff registered with the United States Consul at Kobe, Japan, and advised the Consul that he intended to enroll in Hosei University and to pursue a three-year course. The Consul registered plaintiff as a student, and renewed his passport for but 90 days.

4. After December 8, 1941, plaintiff quit Hosei University. In so doing he was motivated by the war, in that had he stayed in the university he would have become a non-commissioned officer in the Japanese, and also because of his displeasure of the attack made upon his relatives in Hawaii, United States of America.

5. Upon leaving the university, plaintiff lived at Yamaguchi with an uncle. His registration with the Japanese police was accordingly changed. At no time after December 8, 1941, was he ever questioned or bothered by either the military or civil police on account of his United States citizenship.

6. At least after entering Hosei University plaintiff knew of the Japanese Military Conscription law.

7. In March 1943, plaintiff got his final draft notice, was examined in April, and inducted in December, 1943. Plaintiff remained in the Japanese Army until Japan surrendered.

8. Plaintiff found life in the Japanese Army unpleasant because (a) he failed at intercepting enemy messages for the Japanese Army and so was suspect and assigned to hard labor carrying rice bags at Hankow Headquarters; and (b) he was unpopular with the officers and soldiers because he refused to be subservient and because he was known to have been born in Hawaii and to have been in the R.O.T.C. For refusing to do a corporal's washing, plaintiff was once beaten by the corporal with a boot, and almost nightly plaintiff was beaten up because of his birth in the United States.

9. Plaintiff entered the Japanese Army as a First Class Private and was discharged as a Superior Private.

10. Plaintiff did not resist induction into the Japanese Army because he feared the "Kempei" or military police, who he believed would forcibly take a draft dodger and mistreat or kill him and or his relatives. Fear of imprisonment for violation of the conscription law was secondary to fear of the military police.

11. When Japan surrendered, plaintiff went to China with his uncle, and at Shanghai applied for a United States passport.

12. Plaintiff admits that he lied to the Consul in that he told him he was in the Japanese Army but a short time rather than two and a half years. His reason for telling a lie was that he believed in error that such would facilitate his return home to see his sick father, whose only son he is, and also because he wished to get out of China before another war developed.

13. Plaintiff's passport application was denied at Shanghai due to his service in the Japanese Army.

14. Thereupon plaintiff returned to Japan, and worked as an interpreter for the British Occupation Forces.

15. In 1949 at Kobe plaintiff re-applied for a United States passport. Again he admittedly lied concerning his services in the Japanese Army. Finally in March, 1950, he decided to tell the Consul the truth. His application was denied, due to aforesaid military service, and a certificate of loss of nationality was issued (8 U.S.C. Section 901).

16. At the hearing before this Court plaintiff asserted first that he was only a United States citizen but later in tears admitted that he was also a subject of Japan.

Conclusion of Law

The plaintiff is entitled to the declaration of United States citizenship prayed for because Section 801(*e*) of Title 8, United States Code, is unconstitutional.

Opinion

For the reasons indicated in *Okimura* v. *Acheson*, No. 1027, decided this day, the petition is granted.

Dated at Honolulu, Territory of Hawaii, September 12, 1951.

(S.) J. Frank McLaughlin,
United States District Judge.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

Civil No. 1011

HISAO MURATA, PLAINTIFF

v.

DEAN ACHESON, AS SECRETARY OF STATE, DEFENDANT

JUDGMENT

The above cause having come on regularly for trial on April 24 and 25, 1951, before the Honorable J. Frank McLaughlin, Judge Presiding, without a jury, no jury having been requested, the plaintiff appearing by his attorneys, A. L. Wirin of Los Angeles, California, and Kazuro Miko of the law firm of Fong, Ming and Choy of Honolulu, and the defendant appearing by his attorney, Howard K. Hoddick, United States Attorney, and evidence having been introduced on behalf of the plaintiff and the defendant, and the Court having heard the arguments of counsel and being fully advised in the premises and having heretofore filed a decision in this matter which contains findings of fact and conclusions of law on September 12, 1951, now makes and enters the following:

JUDGMENT

The plaintiff is and has been at all times herein a citizen of the United States, and is herewith adjudged to be a citizen of the United States, with all the rights and privileges thereof.

Dated at Honolulu, T. H., this eleventh day of October, 1951.

(S.) J. FRANK MCLAUGHLIN,
Judge, United States District Court.

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